

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 09-14-04.

The IRO reviewed traction, manipulation, kinetics, diathermy, electrical stimulation, massage, therapeutic exercises, modalities, massage, muscle testing and DME rendered from 02-20-04 through 07-13-04 that were denied based upon "V".

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 01-07-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 99070 (3 units) date of service 02-17-04 denied with denial code "G/B377" (bundled procedure; no separate payment allowed). The carrier has made no payment. Per Rule 133.304(c) and Rule 134.202(a)(4) the carrier did not specify which service code 99070 was global to. Reimbursement is recommended per Rule 134.202(d)(2) in the amount of **\$66.33 (\$40.00, \$18.33 and \$8.00)**.

CPT code 97750-MT (5 units) dates of service 02-18-04 and 02-19-04 denied with denial code "G/X815" (procedure is incidental to the primary procedure and does not warrant separate reimbursement). The carrier has made no payment. Per Rule 133.304(c) and Rule 134.202(a)(4) the carrier did not specify which service code 97750-MT was global to. The MAR per Rule 134.202(c)(1) is \$34.30 (\$27.44 X 125%). The requestor billed \$33.40 for each unit in dispute. Reimbursement is recommended in the amount of **\$167.00 (\$33.40 X 5 units)**.

CPT code 95851 (4 units) date of service 02-18-04 denied with denial code "F/Z560" (charge for procedure exceeds the fee schedule or usual and customary values as established by Ingenix). The carrier has made a payment of \$92.60. The MAR per Rule 134.202(c)(1) is \$23.15 (\$18.52 X 125%). The carrier has paid the MAR (\$23.15 X 4 units). No additional reimbursement recommended.

CPT code 99080-73 date of service 04-13-04 denied with denial code "V/X435" (based on peer review further treatment is not recommended). Per Rule 129.5 the TWCC-73 is a required report and is not subject to an IRO review. Reimbursement is recommended in the amount of **\$15.00**. A referral will be made to Compliance and Practices due to an improper denial per Rule 133.304(c).

This Findings and Decision is hereby issued this 8<sup>th</sup> day of February 2005.

Medical Dispute Resolution Officer  
Medical Review Division

### **ORDER**

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the Medicare program reimbursement methodologies effective August 1, 2003 per Commission Rule 134.202(c), plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Decision is applicable for dates of service 02-17-04 through 03-16-04 and date of service 04-13-04 in this dispute.

This Order is hereby issued this 8<sup>th</sup> day of February 2005.

Medical Necessity Team Manager  
Medical Review Division

Enclosure: IRO Decision

### **IRO Medical Dispute Resolution M5 Retrospective Medical Necessity IRO Decision Notification Letter**

Date: 12/20/2004 (Amended 1/24/2005)  
Injured Employee:  
MDR #: M5-05-0195-01  
TWCC #:  
MCMC Certification #: 5294

Requested Services:

Traction, manipulation, kinetics, diathermy, elec stim, massage, therapeutic exercises, modalities, massage, ROM, muscle testing, DME.

MCMC llc (MCMC) is an Independent Review Organization (IRO) that was selected by The Texas Workers' Compensation Commission to render a recommendation regarding the medical necessity of the above Requested Service.

Please be advised that a MCMC Physician Advisor has determined that your request for M5 Retrospective Medical Dispute Resolution on 10/8/2004, concerning the medical necessity of the above referenced requested service, hereby find the following:

A short course of chiropractic intervention would be certified as reasonable and necessary to include all of the elements listed above inclusive of active and passive care as well as the ancillary diagnostic testing. The course of care certified as reasonable and medically necessary include dates of service from 02/20/2004 through 03/16/2004. These dates of service would represent four weeks of care consistent with standards of care within the chiropractic profession as well as standards of practice for a typical trial of care. Dates of service beyond 03/16/2004 are not certified as medically necessary including all of the elements in question listed above.

This is based on:

- \*Notification of IRO Assignment dated 10/08/2004
- \*TWCC MR-117
- \*TWCC-60 Pgs. 1 & 2 dated 12/14/2004
- \*IRO medical dispute resolution notification letter dated 10/08/2004
- \*Liberty Mutual claim summary
- \*Back and Joint Clinic Summary of Provider's Position dated 10/25/2004
- \*Back and Joint Clinic office notes 02/17/2004 through 05/14/2004 \*Biofreeze 4 oz. tube information sheet with patient signature x 2.
- \*Flexible Polar Packs information sheet with patient signature
- \*Reflex carpal tunnel brace information sheet with patient signature
- \*LSI silver self-adhesive electrodes information sheet with patient signature x 3.
- \*The Back and Joint Clinic, Initial Medical Narrative Report dated 02/17/2004
- \*Texas Workers' Compensation Work Status Reports dated 02/17/2004, 04/13/2004, 02/21/2004, 04/13/2004, 06/11/2004, 05/15/2004
- \*Texas Workers' Compensation Commission form TWCC-535 in Spanish
- \*Data Sheet in Spanish dated 02/04/2004 and apparent translation of Data Sheet dated 02/11/2004
- \*Cervical, Right Wrist, Left Wrist, Left Elbow, Right Elbow, Left Shoulder and Right Shoulder Range of Motion reports dated 02/19/2004 and 04/08/2004
- \*The Back and Joint Clinic, Subsequent Medical Narrative Report dated 04/08/2004
- \*The Back and Joint Clinic, Request for Detailed Job Description dated 05/14/2004
- \*The Back and Joint Clinic, Therapeutic Procedures Charts 02/24/2004 to 04/05/2004
- \*The Back and Joint Clinic, Muscle Strength Testing dated 03/09/2002 \*The Back and Joint Clinic, Special Testing dated 03/09/2004
- \*The Back and Joint Clinic, Treatment Plan dated 02/24/2004
- \*The Back and Joint Clinic Exercise Grid dated 02/24/2004 through 03/05/2004
- \*The Back and Joint Clinic, Treatment Plan dated 03/09/2004
- \*The Back and Joint Exercise Grid 03/10/2004 through 04/05/2004
- \*MRI referral dated 02/18/2004
- \*Brazos Valley Open MRIs of Left Elbow, Right Elbow, Cervical Spine, Right Wrist, Left Wrist, Right Shoulder, Left Shoulder reports dated 02/23/2004 through 02/25/2004
- \*The Back and Joint Clinic, referral letter to The Suchowiecky Center dated 02/18/2004
- \*The Suchowiecky Center, Initial Assessment/Physical Examination dated 02/27/2004
- \*The Suchowiecky Center, Update Assessment/Physical Examination dated 05/19/2004
- \*The Back and Joint Clinic, referral letter for Neurological Evaluation dated 02/27/2004

- \*Bryan Neurology Services, PA, Workers' Compensation Narrative Report date 03/08/2004
- \*Bryan Neurology Services, PA, Electromyography Report dated 03/08/2004 and Nerve Conduction Studies dated 03/08/2004
- \*The Back and Joint Clinic, referral for Orthopaedic Evaluation dated 04/13/2004
- \*TWCC Report of Medical Evaluation dated 04/27/2004
- \*Houston Medical and Therapeutic Clinic Independent Medical Evaluation dated 04/27/2004
- \*Evaluation by Dr. George Richardson dated 04/21/2004
- \*TWCC form EES-14 dated 04/13/2004
- \*The Back and Joint Clinic, Affidavit of Mailing dated 04/19/2004 \*The Back and Joint Clinic, letter to Dr. Wilkerson dated 04/16/2004
- \*Exhibits pages 188 through 190
- \*Annotated Bibliography
- \*"Some Medical Evidence Relied Upon to Form Basis of Medical Opinions"

It is obvious that this injured individual attended an initial course of physical medicine from the date of injury through at least 12/2003. It also appears that the injured individual was determined to be at MMI and was released from care, although these facts cannot be verified given the submitted documentation. It is also not possible to ascertain what progress was achieved through the course of care in 2003 as no records were submitted for review. Nevertheless, the submitted documentation indicates that progress during 2003 was minimal and a change of doctor request was made. Therefore, based on the lack of information submitted from the initial course of care in 2003 and based on the patient reporting according to the initial report dated 02/17/2004, a short trial of chiropractic care would be reasonable and medically necessary. However, given the fact that this injured individual had attended 6-8 weeks of prior physical medicine and given the fact that the date of injury is listed as \_\_\_\_ (more than four months prior to the initial of care on 02/17/2004), and given the fact that no significant complicating factors were revealed through advanced testing, a higher burden of proof would be placed on the documentation to demonstrate that significant objective progress was being achieved through the course of chiropractic care and that subjective and therapeutic relief was being reported by the injured individual. Serial objective subsequent exams revealed some equivocal results indicative of objective progress. However it should be noted that some of the objective elements of the subsequent exams actually revealed degradation of symptomatology in certain areas. However, it does appear at least anecdotally that the injured individual had achieved some objective progress. However, it is not evident from any of the submitted documentation that subjective progress was being reported or demonstrated within the documentation. Specifically, the injured individual reported pain levels of 4-5/10 during the initial reporting. Clinical and daily notes subsequent to the initial exam do not clearly demonstrate that any subjective progress was being achieved. Pain levels remain at 4-5/10 throughout the course of care. While objective progress is an important measure of the efficacy of a course of treatment, subjective progress is important as well. Without the patient perception of subjective progress and therapeutic relief, the objective progress demonstrated in serial testing alone does not serve to warrant or substantiate the need for additional care.

Furthermore, it appears that some significant psychosocial issues existed in this case as reflected by the psychological inventories administered and a psychological assessment

performed by an appropriate facility. This information was known at an early date, as early as the initial exam dated 02/17/2004. Furthermore, it was established in a psychological report dated 02/27/2004. In this particular case, the revelation of psychosocial issues places an even larger burden of proof on the documentation to ensure and effectively demonstrate that objective as well as subjective progress was being achieved. It appears that some objective progress was demonstrated however there is no clear demonstration of subjective progress as perceived and reported by the injured individual. Therefore, the efficacy of the initial course of care is not clearly demonstrated to have effectively yielded therapeutic gain.

As stated above, given the circumstances surrounding the initial exam dated 02/17/2004, specifically that no documentation was submitted for review prior to 02/17/2004 and given the fact that the injured individual continues to report significant symptomatology, a short trial of care appeared warranted. However, the substantiation and medical necessity for care beyond 4 weeks is not established due to the lack of complicating factors, total duration of care, time elapsed post injury and the lack of documented subjective progress.

Records indicate that the above captioned individual was injured during the course of her normal employment. The history reveals that she related that a work related injury occurred on or before \_\_\_\_\_. The initial medical narrative report from the Attending Provider (AP) further establishes that the injured individual reported pain significantly prior to \_\_\_\_\_, however continued to work for as many as five months with continuing pain. Initial presenting complaints of pain included bilateral hands and fingers, bilateral shoulders, bilateral elbows and her neck. The initial narrative report further indicates that the injured individual initially saw the company nurse who referred her to another physician center to consult with Dr. Roquet. Reportedly, Dr. Roquet issued an anti-inflammatory medication and a therapy program. The therapy program continued through December and into January. The injured individual was deemed at MMI and received a 0% impairment. It should be noted that no clinical information was received from Dr. Roquet or any of the initial course of care to ascertain what progress occurred during that treatment. The injured individual presented to the office of the AP on or about 02/17/2004, complaining of severe pain. A report indicates that the reported pain levels were generally 5/10. On 02/17/2004, some psychosocial screenings were issued that revealed the possibilities of distress, anxiety, and/or somatic preoccupation. Therefore, the injured individual was referred for psychological evaluation. The physical exam revealed decreased muscle strength and ranges of motion in the neck and upper extremities. Functional lifting elements were also recorded as decreased. MRI exam of multiple body parts including neck, shoulders and wrists revealed no significant abnormalities. Electrodiagnostic examinations were also within normal limits. Serial exams revealed some equivocal results, however, objective testing revealed some progress. From a subjective standpoint, pain levels remained the same throughout the course of care, according to the submitted clinical data. The injured individual also attended a litany of consultative referrals. The result of those referral exams revealed no significant physical abnormalities.

The reviewing provider is a Licensed Chiropractor and certifies that no known conflict of interest exists between the reviewing Chiropractor and any of the treating providers or any providers who reviewed the case for determination prior to referral to the IRO. The reviewing physician is on TWCC's Approved Doctor List.

This decision by MCMC is deemed to be a Commission decision and order (133.308(p) (5).

**In accordance with commission rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent via facsimile to the office of TWCC on this**

**24<sup>th</sup> day of January 2004.**

**Signature of IRO Employee:** \_\_\_\_\_

**Printed Name of IRO Employee:** \_\_\_\_\_